BILL NO. S-94-12-34

SPECIAL ORDINANCE NO. S-04-95

AN ORDINANCE approving Contract #525-94, I-469 SANITARY SEWER RELOCATE between T&G INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Contract #525-94, I-469 SANITARY SEWER RELOCATE by and between T & G INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

> all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the sanitary sewer as herein described in Sewer Contract 525-94, attached hereto and made a part hereof;

involving a total cost of Seven Hundred Forty-Nine Thousand Nine Hundred Ninety-Nine and 65/100 Dollars ($749,999.65.)

SECTION 2. Prior Approval has been requested from Common Council on DECEMBER 27, 1994. Two copies of said Contract are on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Tom Tolarico
Council Member

APPROVED AS TO FORM
AND LEGALITY

J. Timothy McCaulay
J. Timothy McCaulay, City Attorney

Read the first time in full and on motion by Talarico, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____, day of _____, 19_____, at _____ o'clock _____ M., E.S.T.

DATED: 12-27-94

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Talarico, seconded by _____, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	7			2
BRADBURY	✓			
EDMONDS				✓
GiaQUINTA	✓			
HENRY	✓			
LONG	✓			
LUNSEY	✓			
RAVINE	✓			
SCHMIDT	✓			
TALARICO	✓			

DATED: 1-10-95

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(ANNEXATION)~~ ~~(APPROPRIATION)~~ ~~(GENERAL)~~ ~~(SPECIAL)~~ ~~(ZONING)~~ ORDINANCE ~~RESOLUTION~~ NO. G-04-95 on the 10th day of January, 1995.

ATTEST:

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

(SEAL)

Don J. Schmidt
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 11th day of January, 1995, at the hour of 11:30 o'clock A.M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 13th day of January, 1995, at the hour of 2:00 o'clock P A.M., E.S.T.

Paul Helmke
PAUL HELMKE, MAYOR

BILL NO. S-94-12-34

REPORT OF THE COMMITTEE ON
CITY UTILITIES
SAMUEL J. TALARICO - JANET G. BRADBURY - CO-CHAIR
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON CITY UTILITIES TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) approving Contract #525-94, I-469 SANITARY SEWER RELOCATE between T&G INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE) (~~RESOLUTION~~)

DO PASS	DO NOT PASS	ABSTAIN	NO REC

DATED: 1-10-95.

Sandra E. Kennedy
City Clerk

SEWER CONTRACT 525-94

BOARD ORDER NO. 106-93 WORK ORDER NO. 73950

THIS CONTRACT made and entered into this 21 day of DEC. 1994, by and between **T & G Inc.,** hereinafter called **CONTRACTOR** and the **City of Fort Wayne, Indiana,** an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works, herein called **OWNER;**

WITNESSETH, that the **CONTRACTOR** and the **OWNER**, for the considerations hereinafter named, agree as follows:

ARTICLE I: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following sanitary sewer:

Bounded by the Wallen Road and I-69 intersection on the South. The new right-of-way line of I-469 on the North. This relocation runs Northeasterly along the West limited access line of the new interchange.

Beginning at an existing manhole located 330± L.F. East and 100± L.F. North of the intersection of I-69 and Wallen Road, (25' North of North right--of-way Wallen Road 170' East of East right-of-way I-69); thence Westerly a distance of 130' to Manhole #1; thence Northwesterly a distance of 600' to Manhole #2; thence Northwesterly a distance of 460' to Manhole #3; thence Northeasterly a distance of 492' to Manhole #4; thence Northeasterly a distance of 354' to Manhole #5; thence Northeasterly a distance of 140' to a Manhole #6; thence Northeasterly a distance of 426' to Manhole #7; thence Easterly a distance of 230' to Manhole #8; thence Easterly a distance of 327' to Manhole #9; thence Northerly a distance of 384' to Manhole #10; thence Northerly a distance of 357' to Manhole #11. Manhole #11 being the point of terminus situated approximately 2530' North of intersection of I-69 and Wallen Road and approximately 165' West of centerline of I-69.

Sewer shall be 24" in diameter.

all according to RESOLUTION NO. 525-1994 with plans prepared by Butler, Fairman & Seufert Project #3137 Sheets 1-11 and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2: THE CONTRACT PRICE

The **OWNER** shall pay **CONTRACTOR** for the performance of the contract the unit price sum of **Seven Hundred Forty-Nine Thousand Nine Hundred Ninety-Nine and 65/100 ($749,999.65) Dollars.** In the event the amount of work is increased or decreased by **OWNER**, the contract sum shall be increased or decreased according to the unit price schedule set forth in the **CONTRACTOR'S** proposal.

ARTICLE 3: PROGRESS PAYMENTS AND RETAINAGE

The **CONTRACTOR** may submit requests for payments no more often than every thirty (30) days for work performed and accepted under the contract. If the contractor is in compliance with the provisions of the contract, the Board will make payments for such work performed and completed. However, in any such case, the Board will retain five (5%) percent of the total amount owing to insure satisfactory completion of the contract and to insure contractor's compliance with the E.B.E. Rider attached to this contract. Payments to the contractor are not to exceed 90% of the total contract amount until the **OWNER** has verified that the **CONTRACTOR** has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.

If the contract is in excess of $100,000 the contract will be subject to the standard Board of Public Works escrow agreement.

ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract, including the E.B.E. Rider, is fully performed. Payments to the **CONTRACTOR** are not to exceed 90% of the total contract amount until the **OWNER** has verified that the **CONTRACTOR** has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.

Upon filing of a Completion Affidavit by the **CONTRACTOR** that the work is ready for final inspection and acceptance, the Board of Public Works will direct the Engineering Department of the **OWNER** to promptly make such inspection, and will direct the Contract Compliance Department of the **OWNER** to make a final recommendation on whether the **CONTRACTOR** made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider.

When the Engineering Department finds the work acceptable under the contract and the contract is fully performed, it shall so inform the Board of Public Works. Likewise, when the Contract Compliance Department determines that the **CONTRACTOR'S** efforts constitute good faith efforts to attain the E.B.E. goal as agreed in the E.B.E. Rider, it shall so inform the Board of Public Works through an E.B.E. Compliance Final Report.

Upon receiving both the Engineering Department's and the Contract Compliance Department's recommendations, the Board of Public Works shall issue a final

certificate stating that the work provided for in this Contract has been completed and accepted, and further stating that the E.B.E. Rider goal has been met. Thereupon, the entire balance of the contract sum shall be due and payable to the **CONTRACTOR;** provided only that the **CONTRACTOR** shall first furnish **OWNER,** if requested to do so, satisfactory evidence that all persons who have supplied labor, material or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

In the event that the Board of Public Works determines that good faith compliance wit the E.B.E. Rider has not occurred, appropriate reduction in the final payment will be made pursuant to paragraph 6 of the E.B.E. Rider attached hereto. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.

ARTICLE 5: WORKMEN'S COMPENSATION ACT

The **CONTRACTOR** will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with the Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages or injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of **CONTRACTOR,** or its agents, employees or workmen or any judgment of any court or award of any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any subcontractor or subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said **CONTRACTOR,** shall be conclusive against **CONTRACTOR** as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that **CONTRACTOR** indemnify and hold harmless **OWNER** in the premises.

ARTICLE 6: NON-DISCRIMINATION OF LABOR

The **CONTRACTOR** further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana, as General Ordinance No. G-34-78 (as amended) on December 12, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after completion of construction or upon request of the Office of Compliance.

ARTICLE 7: PREVAILING WAGE SCALE

The **CONTRACTOR** agrees to pay, and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the Statutes of the State of Indiana, and the Ordinances of the City of Fort Wayne, according to the applicable wage scale as included in the bid documents.

ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

a. Advertisement for Bids, for Contract No. 525-1994
b. Instructions to Bidders for Contract No. 525-1994
c. Contractor's Proposal dated September 10, 1994
d. Plans prepared by Butler, Fairman & Seufert Project #3137
e. Supplemental Specifications for Contract No. 525-1994
f. Workmen's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne
g. Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended)
h. Prevailing Wage Scale
i. Performance and Guaranty Bond
j. Labor and Material Payment Bond
k. Minority/Female Employment Hourly Utilization
l. Right-of-Way Cut Permit
m. Comprehensive Liability Insurance Coverage
n. EBE Rider

ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this Contract, the **CONTRACTOR** shall furnish a Performance and Guaranty bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of one (1) year following written acceptance of the work by the **OWNER.**

ARTICLE 10: INDEMNITY

CONTRACTOR shall furnish to **OWNER** within ten (10) days of the date hereof, a certificate from an insurer acceptable to **OWNER** showing personal property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to **OWNER** and in accordance with the Statutes of the State of Indiana.

ARTICLE 11: ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the **CONTRACTOR** and the **OWNER** under the provisions of this Contract shall be subject to the decision of the Director of Board of Public Works of the **OWNER**, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications or other phases of the work covered by this contract will be permitted except on prior written authorization by the Board of Public Works.

ARTICLE 12: COMPLETION DATE

The **CONTRACTOR** agrees to complete the work specified in the contract within 120 consecutive calendar days after having been ordered by the **OWNER** to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

This agreement, although executed on behalf of the **OWNER** by the Mayor and Board of Public Works of the City of Fort Wayne, Indiana, shall not be binding upon the **OWNER** unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

ARTICLE 14:

This contract is governed by the Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CONTRACTOR:

By Thomas M. Stockamp, Pres.
Thomas M. Stockamp, President
T-G INCORPORATED

CITY OF FORT WAYNE

By_____
Paul Helmke, Mayor

BOARD OF PUBLIC WORKS

Linda Buskirk
Linda Buskirk, Chairman
Public Works

C. James Owen
C. James Owen, Member

Terrance P. McCaffrey
Terrance P. McCaffrey, Member

ATTEST:

Patricia J. Crick
Patricia J. Crick, Clerk

ACKNOWLEDGEMENT

STATE OF INDIANA)
)SS
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public, in and for said County and State personally appeared Thomas M. ~~Stockamp~~ who acknowledged the execution of the foregoing Contract as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and seal this 19th day of December 1994.

Cheryl A. Grayless
Notary Public

Cheryl A. Grayless #331342
Printed Name of Notary

A Resident of ALLEN County

My Commission Expires:

December 6, 1997

This instrument prepared by:
Patrick W. Callahan
Assistant Chief Engineer/Sanitary

APPROVED BY THE Common Council of the City of Fort Wayne, Indiana, on the __ day of _____ 1994.

SPECIAL ORDINANCE: _____

E.B.E. RIDER

THIS AGREEMENT made and entered into by and between the CITY OF FORT WAYNE, hereinafter referred to as "Owner" and T & G, Inc., hereinafter referred to as "Contractor",

WITNESSETH:

WHEREAS, Contractor is the apparent low bidder on construction project commonly referred to as the I469 - 69 Interchange, Sewer Relocation which project was bid under Resolution Number 525-1994; and,

WHEREAS, Contractor agrees that the goal for qualified Emerging Business Enterprises, hereinafter sometimes referred to as "E.B.E.'s" as subcontractors on this project is 10% of the contract amount; and,

WHEREAS, Owner has, pursuant to Executive Order 90-01, adopted a goal of at least 10% of the contract amount to Emerging Business Enterprises as defined under said Executive Order; and,

WHEREAS, said Executive Order states:

"Section 2, Paragraph C. Each contractor shall be required to make a good faith effort to subcontract 10% of the contract amount to Emerging Business Enterprises on each construction contract he/she is awarded. In the event a contractor is unable to subcontract 10% of the contract amount or secure the services of an Emerging Business Enterprise, he/she will be required to submit a completed Request for Waiver form on which he/she will provide a written description of the efforts taken to comply with the participation goals."

NOW, THEREFORE, in consideration of the foregoing and of the mutual

agreements hereinafter contained, the sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. Conditional Award. Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction contract to which this Rider is attached, Owner awards the construction contract to the Contractor.

2. E.B.E. Retainage Requirements. If the contractor is in compliance with the provisions of the construction contract to which this Rider is attached, the Owner will make payments for such work performed and completed. However, in any such case, the Owner will retain ten (10%) percent of the total amount owing to insure satisfactory completion of the contract and to insure contractor's compliance with this E.B.E Rider. Upon final inspection and acceptance of the work, and determination by the Fort Wayne Board of Public Works that the contractor has made a good faith effort to subcontract 10 % of the contract amount to emerging business enterprises, the contractor will be paid in full.

   In the event there is a determination that good faith compliance with this E.B.E. Rider has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this E.B.E. Rider will be made.

   If the contract is in excess of $100,00 the contract will be subject to the Standard Board of Public Works escrow agreement. However, payments to the CONTRACTOR are not to exceed 90% of the total contract amount until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the E.B.E. goal stipulated in this E.B.E. Rider. Payment of the final 10%

of the total contract amount will be dependent upon good faith efforts to comply with this E.B.E. Rider, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this E.B.E. Rider.

3. Request for Waiver. If at the time final payment application is made, contractor has not attained the 10% E.B.E. goal, contractor shall file with the final payment application a "Request for Waiver." Said Request for Waiver shall contain a written description of the efforts taken by Contractor to attain the 10% E.B.E. goal.

4. Determination of Waiver Requests. The Contract Compliance Department of the City of Fort Wayne shall examine all Requests for Waiver to determine if Contractor's efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said Requests for Waiver for the final determination of the Board of Public Works of the City of Fort Wayne.

5. Good Faith Per Se. In any case, a contractor shall be deemed to have made good faith efforts at compliance where E.B.E.'s have been subcontracted for every sub-contract for which there are qualified E.B.E.'s available.

6. Consequence of Non-Compliance. In the event the Board of Public Works approves a recommendation that contractor failed to make good faith efforts at compliance, the contract shall be reduced by the amount calculated as the difference between 10% and the percentage level met. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.

7. Waiver Approved. In the event the Board of Public Works determines that a good faith effort to comply with this E.B.E. Rider has been made, the contract shall not be reduced, and the balance owing to the contractor shall be paid in full.

IN WITNESS WHEREOF, the parties have executed this E.B.E. Rider this 21 day of DECEMBER 1994.

T-G INCORPORATED

By: Thomas M. Stockamp, Pres.
Contractor

By: **BOARD OF PUBLIC WORKS**

Linda Buskirk

Linda Buskirk, Chairman Board Public Works

C. James Owen, Member

Terrance P. McCaffrey

Terrance P. McCaffrey, Member

ATTEST: Patricia J. Crick

Patricia J. Crick, Clerk

TO: CITY ATTORNEY

FROM: BOARD OF PUBLIC WORKS

APPROVED BY: _____
Linda Buskirk

DATE: December 22, 1994

SUBJECT:
FILE # ASSIGNED BY RECORD LIBRARIAN

ACTION REQUEST: Please prepare ordinance to be introduced November 27, 1994 approving Contract #525-94, I-469 Sanitary Sewer Relocate. T-G Inc. is the contractor.

TITLE OF ORDINANCE: Sewer Contract 525-94, I-469 Sanitary Sewer Relocate

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works

SYNOPSIS OF ORDINANCE: For Sewer Contract 525-94, I-469 Sanitary Sewer Relocate, the contractor shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following sanitary sewer:

Bounded by the Wallen Road and I-69 intersection on the South. The new right-of-way line of I-469 on the North. This relocation runs Northeasterly along the West limited access of the new interchange.

Beginning at an existing manhole located 330± L.F. East and 100± North of the intersection of I-69 and Wallen Road, (North of North right-of-way Wallen Road 170' East of East right-of-way I-69); thence Westerly a distance of 130' to Manhole #1; thence Northwesterly a distance of 600' to Manhole #2; thence Northwesterly a distance of 460' to Manhole #3; thence Northeasterly a distance of 492' of Manhole #4; thence Northeasterly a distance of 354' to Manhole #5; thence Northwesterly a distance of 140' to a Manhole #6; thence Northeasterly a distance of 426' to Manhole #7; thence Easterly a distance of 230' to Manhole #8; thence Easterly a distance of 327' to Manhole #9; thence Northerly a distance 384' to Manhole #10; thence Northerly a distance to Manhole #11. Manhole #11 being the point of terminus situated approximately 2530' North of intersection of I-69 and Wallen Road and approximately 165' West of centerline of I-69.

Sewer shall be 24" in diameter.

The Contractor is T & G Inc. **PRIOR APPROVAL IS BEING REQUESTED 12/27/94.**

EFFECT OF PASSAGE: Project can be completed.

EFFECT OF NON PASSAGE:

J-94-12-34

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) $749,999.65 (SEWER UTILITY FUNDS REIMBURSABLE THROUGH STATE AND FEDERAL AGENCIES)

ASSIGNED TO COMMITTEE: